

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

CHRISTIAN ANGEL PACHECO,

Petitioner,

v.

COURT OF APPEAL, FIFTH
APPELLATE DISTRICT,

Respondent.

Case No.: 1:23-cv-01717-JLT-HBK (HC)

ORDER ADOPTING THE FINDINGS AND
RECOMMENDATIONS, DISMISSING FIRST
AMENDED PETITION FOR WRIT OF
HABEAS CORPUS, AND DIRECTING CLERK
OF COURT TO CLOSE CASE

(Docs. 1, 6)

Christian Angel Pacheco, a state prisoner, is proceeding pro se with a first amended petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Doc. 1.) The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

The assigned magistrate judge conducted a preliminary review under Rule 4 of the Rules Governing Section 2254 Cases, and on January 5, 2024 issued Findings and Recommendations recommending that the Petition be dismissed without prejudice for failure to exhaust administrative remedies. (Doc. 6.) The Court served the Findings and Recommendations on all parties and notified them that any objections were due within 14 days. (*Id.*) The Court advised the parties that the “failure to file objections within the specified time may result in the waiver of rights on appeal.” (*Id.* at 5, citing *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014).) Petitioner did not file objections, and the time to do so has expired.

According to 28 U.S.C. § 636(b)(1)(C), this Court performed a *de novo* review of this

1 case. Having carefully reviewed the matter, the Court concludes the Findings and
2 Recommendations are supported by the record and proper analysis.

3 A petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal a
4 district court's denial of his petition, and an appeal is only allowed in certain circumstances.
5 *Miller-El v. Cockrell*, 537 U.S. 322, 335–36 (2003); 28 U.S.C. § 2253. If a court denies a habeas
6 petition on the merits, the court may only issue a certificate of appealability “if jurists of reason
7 could disagree with the district court’s resolution of [the petitioner’s] constitutional claims or that
8 jurists could conclude the issues presented are adequate to deserve encouragement to proceed
9 further.” *Miller-El*, 537 U.S. at 327; *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). While the
10 petitioner is not required to prove the merits of his case, he must demonstrate “something more
11 than the absence of frivolity or the existence of mere good faith on his . . . part.” *Miller-El*, 537
12 U.S. at 338. The Court finds that reasonable jurists would not find the Court’s determination that
13 the first amended petition should be denied debatable or wrong, or that the issues presented are
14 deserving of encouragement to proceed further. Petitioner has not made the required substantial
15 showing of the denial of a constitutional right. Therefore, the Court declines to issue a certificate
16 of appealability. Thus, the Court **ORDERS**:

- 17 1. The Findings and Recommendations issued on January 5, 2024, (Doc. 6), are
18 **ADOPTED** in full.
- 19 2. The first amended petition for writ of habeas corpus (Doc. 1) is **DISMISSED**.
- 20 3. The Court declines to issue a certificate of appealability.
- 21 4. The Clerk of the Court is to terminate any pending deadlines/motions and **CLOSE**
22 the case.

23
24 IT IS SO ORDERED.

25 Dated: **January 29, 2024**


UNITED STATES DISTRICT JUDGE